

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 123] NEW DELHI, TUESDAY, MAY 19, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 11th May 1953

S. R. O 921.—WHEREAS the election of Shri Mudie Naik and Sadasiva Tripathy, as members of the Legislative Assembly of the State of Orissa, from the Nowrangpur constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ramchandra Chowdhury son of Mohan Chowdhury, Village Dondra, P. O. Tentulikhunti, District Koraput ;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission ;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, GANJAM-NAYAGARH,
BERHAMPUR (ORISSA)

PRESENT :—

Shri Dwarikanath Das, B.A., B.L.—*Chairman.*

Shri G. Krishnamurthi, M.A., B.L.,

AND

Shri R. K. Ratho, M.A., B.L.—*Members.*

ELECTION CASE No. 2 OF 1952

The 30th day of April, 1953

Sri Ramachandra Chowdhury, age 40 years, son of Mohan Chowdhury residing at Dondra village, P. O. Tentulikhunti, District Koraput.—*Petitioner.*

versus

1. Sri Sadasiva Tripathy, residing at village Nowrangpur, P. S. and P. O. Nowrangpur, District Koraput, at present 18 Cantonment, Cuttack.
2. Sri Simadri Mishra, residing at Gowdo Sahi, Nowrangpur, P. S. and P. O. Nowrangpur, District Koraput.
3. Sri Mudie Naik, residing at village Patri, P. O. and P. S. Dabugaon, District Koraput.
4. Hannu Naik, son of Musedra Naik, residing at Kesariguda village, P. S. and P. O. Nowrangpur, Koraput District.
5. Kamalalochan Naik, son of Ghenuva Naik, residing in Kasumguda Dangara Hamlet, P. S. Jeypore, Koraput District.

6. Pakulu Gonda, residing in village Khemtagam, P. S. Omarkote, District Koraput.
7. Narasing Singal, son of Hamman Singal, residing in village Gadigam P. S. Kotpad, District Koraput.—*Respondents.*

Sri Jayachandra Patra, pleader for the petitioner.

Messrs. M. Sitaramayya, G. Narayanamurti and Y. Srirama Murti, advocates for respondent No. 1.

Respondent No. 2 in person.

None appears for respondent No. 3.

Respondent Nos. 4, 5, 6 and 7 are *ex parte*.

ORDER

The petitioner Sri Ramachandra Choudhuri was a duly nominated candidate of the 'Gana-tantra' Party at the last election to the House of Legislature of the State of Orissa for the general seat of the double-member Constituency of Nabarangpur and was defeated by respondent No. 1 who secured 40,426 votes as against 18,358 votes of the petitioner. The petitioner originally filed the petition under section 81 of the Representation of the People Act of 1951 impleading respondent No. 1, the returned candidate, respondent No. 2 the other unsuccessful candidate for the general seat and respondent No. 3 the returned candidate for the scheduled caste seat. At the stage of first hearing, the petitioner wanted to add four more persons as respondents on the ground that they were left out by inadvertence and on the prayer being allowed (*vide* order dated 5th January, 1953) respondents 4 and 5 whose nomination papers were rejected by the Returning Officer and respondents Nos. 6 and 7 who withdrew their candidature and did not enter contest at the poll were added.

2. The petitioner's case is that the entire extent of Nabarangpur constituency is a part of the Jeypore Estate which is now under the management of the Court of Wards. Respondent No. 1 who is the Congress candidate was a Minister in the outgoing Congress Cabinet. Prior to the election, a dispute to the succession of the estate of Jeypore was raised after the death of the Maharaja of Jeypore in April 1951 at the instigation of respondent No. 1. Respondent No. 1 had set up a pretender to claim heirship to the Maharaja so that the estate would be either under the control of his nominee the said pretender or it would be placed in charge of the Court of Wards and in either eventuality he would utilise the hierarchy of officials as the Minister of the State for his own election purposes. Being so motivated, respondent No. 1 resorted to corrupt practices of bribery, undue influence, coercion and intimidation and his election has been procured or induced by corrupt and illegal practices as detailed below.

3. That Notification No. 176 dated 15th December, 1951 was published in the Orissa Gazette whereby enhanced seigniorage for timber and other forest products of Jeypore estate were realised and keen anti-congress feeling were roused affecting the prospect of respondent No. 1's election. To allay these feelings and to further the election prospects, respondent No. 1 conspired with the then Chief Forest Officer of the estate and caused a confidential circular dated 20th December, 1951 issued by the Chief Forest Officer to all forest officers asking them not to enforce the enhanced seigniorage rate. By stopping the endorsement of enhanced seigniorage rate, respondent No. 1 himself and his agents and workers with his consent and knowledge told the electors that respondent No. 1 had got the aforesaid notification rescinded and thus the corrupt practices of mass bribery was committed and undue influence on the free exercise of electoral rights was exercised. Respondent No. 1 utilised his position and power as Cabinet Minister and obtained and procured the assistance of various Government Officers in the matter of carrying on active propaganda for advancing the prospects of his election. The Government Officers actively participated in the election work on behalf of respondent No. 1 and with his connivance and that of his agents and workers resorted to acts of intimidation, coercion and threat in inducing and unduly influencing the electors to cast their votes in favour of respondent No. 1. The quota of supply of cloth and uniforms for the constituency was greatly augmented for the period immediately preceding the election and also during the election with the object of directly or indirectly influencing free exercise of electoral right of the electors. Respondent No. 1 indulged in illegal practice of issuing or causing to be issued various circulars, placards and posters which had direct reference to his election and which did not bear on their faces the names and addresses of the Printer and Publishers thereof. Further he submitted improper return of election expenses.

4. The next type of illegal and corrupt practices alleged by the petitioner are that the petitioner's polling agent for Purniguda polling booth, one Ramachandra Patnaik was not allowed to enter the booth on the 1st day of polling, that the presiding officer in certain booths had changed the position of ballot boxes after the polling had started and thus caused confusion in the minds of the electors and that the petitioner's agents' seals put on respondent No. 1's ballot boxes were found missing at 5 booths.

5. In conclusion it is said that but for the votes obtained by the returned candidate respondent No. 1 by corrupt and illegal practices, the petitioner would have obtained a majority of valid votes.

6. In the list of corrupt and illegal practices appended to in the petition particular No. 1 refers to the publication of the enhanced seigniorage rate in the Orissa Gazette and respondent No. 1's conspiring with the Chief Forest Officer and causing a confidential letter dated 19-12-1951 not enforcing the said enhanced seigniorage rate to be issued to all Range Officers, particular No. 2 to confidential circular of the General Manager, Jeypore estate dated 17-12-1951 wherein the Government Officers were given direction to counteract the propaganda carried on by Srimati Pattamani Devi. Particulars Nos. 3 and 4 are the details of the activities of the Government Officers and the estate officials alleged to have been indulged in for the furtherance of the prospects of respondent No. 1's election and particulars 5 and 6 are the details in regard to the quota of supply of cloth and iron rims dealt in paragraph 13 of the petition. Particular No. 7 has reference to paragraph 14 of the petition dealing with placards, posters and circulars and particular No. 8 paragraph 15 of the petition where the petitioner's polling agents are alleged to have been disallowed from Purniguda polling booth. Particular No. 9 refers to change of position of the ballot boxes and particular No. 10 to the missing of seals on the ballot boxes at five booths. Particular No. 11 gives two instances of the use of intimidation on the part of the estate officials at one booth and particulars Nos. 12 to 16 give the instances of the use of threat and intimidation by the agents and workers of respondent No. 1 to prevent the free exercise of the right of franchise and commission of false personation. Particular No. 17 makes specific mention of respondent No. 1's workers attempting to bribe one of the petitioner's partymen by offering him Rs. 20/- and a cycle as bribe.

7. The petitioner finally has prayed for the following reliefs :—

- (a) that the election of the returned candidate *viz.*, respondent No. 1 is void,
- (b) there being no free election by reason that various corrupt and illegal practices of bribery, undue influence, coercion or intimidation have prevailed, the election is wholly void and
- (c) that the election of the returned candidate being void, he himself, be declared duly elected.

8. The contesting respondent No. 1 has challenged the validity of the petition presented under sec. 81 of the Act and has further alleged that the petition is time barred. He contended that respondents 4 to 7 who have been since added were necessary parties and petitioner's not implementing them in the first instance is an illegality affecting the very root of the petition. He denied that he or his agents or any one on his behalf or with his connivance or knowledge resorted to any corrupt or illegal practices of bribery, undue influence, coercion or intimidation and the result of the election has thus been materially affected. To refute the averment in paragraph 4 of the petition that he had set up a pretender to claim succession to the estate of Jeypore and through that pretender he furthered the cause of his election, he has stated such a fact to be maliciously false. His averments on the point are that the present holder of the estate is the daughter's son of late Dr. Vikram Deb Varma and was adopted by him as early as in 1935 and he succeeded to the estate in April 1951 on the death of Dr. Vikram Deb Varma; that the successor being a minor, in the usual course of official administration, the estate was taken under the management of the Court of Wards, that the questions of adoption and succession are subjects of litigation now pending in the Vizagapatam Civil Court, the suits being instituted by one Kumarika Pattamani Debi a sister of Sri Ramachandra Deb who held the estate prior to Dr. Vikram Deb Varma. As regards paragraph 2 of the particulars regarding the issue of the circular dated 17-12-1951 by the General Manager of the Estate he has stated that as the present enquiries reveal, Srimati Pattamani Debi and some others—created trouble in respect of succession of late Dr. Vikram Deb Varma to the Jeypore estate in 1931 and a state of rebellion was created resulting in non-payment of rent and defiance of authorities, that the petitioner who belongs to the Ganatantra party sought to create disaffection among rayats and used the name of the said Srimati Pattamani Debi and even brought her down to Jeypore for propaganda and that the General Manager of the Estate to avoid a situation of lawlessness and confusion issued the circular in question directing that the estate officials should not take part in the campaign started by the Ganatantra party through Srimati Pattamani Debi. The circular has no relation to any election much less to that of the respondent No. 1 and had been issued to safeguard the interest of the present Rajah Saheb in the matter of collection of rents etc. Regarding particular No. 1 and paragraph 10 of the petition wherein averments are made that enhanced seigniorage rates were realised, and that respondent No. 1 conspiring with the Chief Forest Officer got a circular issued stopping the enforcement of the enhanced seigniorage rate and thus indulged in the corrupt practices of mass bribery, respondent No. 1 has made the statement that facts have been distorted to bring in a charge of bribery and undue influence against him, that levying of the seigniorage fees in respect of the forest produce is a matter entirely within the jurisdiction of the estate officials and the Board of Revenue; that publication of the notification dated 15-12-1951 in the Gazette in respect of the seigniorage fees was brought to his notice in course of his tour in the constituency and he promised to look into the matter and that in accordance with the promise he instructed the Range Officer, Nabarangpur, to wire to the Chief Forest Officer to see him at Jeypore on the 20th, that on the 20th he reached Jeypore late in the night and in the morning of 21st he was met by the Chief Forest Officer and was told that on the 19th the circular with instructions to charge the

old rate and not the new rate had been issued. He has further stated that the Chief Forest Officer gave out to him the reason for non-enforcement of the new rate saying that the detailed verification and comparison of the two rates had not then been made and that the news of the increased rate came as a surprise to the people. The respondent thus absolves himself from all responsibility for the confidential circular and denies that he conspired with the Chief Forest Officer and that by causing the notification to be rescinded, he took the credit for himself before the voters. He has also said in this connection that whatever he did in the matter was done in his official capacity as a Minister in charge of the department and there cannot be any question of corrupt practice so as to vitiate the election. Paragraph 11 and 12 of the petition and paragraphs 3 and 4 of the particulars in substance speak of respondent No. 1's utilising his power and position as a Minister and securing the assistance of Government officers including the District Magistrate and the estate officials including the General Manager for the success of his election. To refute that, respondent No. 1 makes emphatic denial that he ever utilised his power and position as a Cabinet Minister and obtained or procured the assistance of various Government officers and the estate officials. It is denied that the then District Magistrate and Collector of Koraput Dr. S. T. Merani I. A. S., canvassed any vote for him. The said District Magistrate Sri Merani had kept under detention one Mr. Rath who therefore bore a grudge against him and it was this person who seems to have inspired the petition alleged in paragraph 4 of the particulars. Para. 13 and particulars 5 and 6 contain allegations of large supply of cloths and cart-rims for the constituency just preceding the election but no specific mention about respondent No. 1's complicity therewith has been made. Respondent No. 1's objections to such allegations are that they are too vague to be answered and they do not give any indication as to how the election was materially affected thereby. Further, he denies knowledge of the details of supply of quota of cloths and cart-rims. Para. 14 of the petition and particular No. 7 relate to unauthorised issue of circulars, placards and posters calling upon the voters to vote for respondent No. 1. It is said by the respondent that the allegations are vague and wanting in particulars. He however has admitted that he got printed some matters giving his symbol and his photo at the Praja Tantra Press, Cuttack, who should have given the names and address of the printer and publisher in the usual course but did not do so. In respect of para 15 of the petition and particular No. 8 where it is alleged that petitioner's polling agent at one particular booth was not allowed to enter the booth, in respect of para. 17 and particular No. 9 where it is said that the position of ballot boxes was changed in contravention of rules and in respect of paragraph 18 and particular No. 10 where it is said that the seals of petitioner's agent put on respondent No. 1's ballot boxes were found missing at 5 booths, respondent No. 1 gives his denial to each of these facts and further adds that the refusal of entry to the petitioner's polling agent, if any, does not materially affect the election, that the position or order of the boxes as required under the rules was never changed far less to the confusion of the voters and the objection of removal of seals are belated and untrue. Regarding para. 19 of the petition where it is said that the return of election expenses was not submitted properly, respondent No. 1 avers that he lodged his election expenses properly in compliance with the rules. Particular No. 11 which refers to intimidation of the voters at Jadenga booth by one Surendra Singh Manager H. Deer & Company and by the forest officer Raigarh, particular No. 12 which speaks of preaching on behalf of respondent No. 1 by his agents and workers with the threat of police marching and particular No. 13 which speaks of the preaching by the said agents and workers of respondent No. 1 at the booth in the name of firing and oppression of 1942 movement are not covered by the pleadings in the petition. Respondent No. 1 however has stated that neither Surendra Singh nor the Raigarh Forest Officer ever worked for him nor did they ever intimidate the voters. Similarly he has denied that his workers and agents intimidated the voters either by the threat of police marching or the firing of 1942 movement. Particulars Nos. 14 and 15 refer to false representation practised upon the voters and those two are also outside the petition. Respondent No. 1 has however denied practice of any such representation by his agents and workers. Particular No. 16 speaks of false personation resorted to at one booth by the complicity of respondent No. 1's agents and workers is not alleged. Still respondent No. 1 has denied that to be a fact and has stated that the petitioner's agents finding that the respondent was securing large number of votes adopted delaying tactics of challenging the votes unnecessarily. The allegation in para. 17 of the particular that respondent No. 1 attempted to bribe through his workers one Purushottam Singh who was the President of the local branch of Ganatantra party is said to be desperate and reckless. In conclusion respondent No. 1 has stated that he secured 40,426 votes as against 18,358 of the petitioner. The constituency being his home constituency and he having represented it since 1937, he is well known in the locality for his public work as a congressman and in other capacities too. The vast majority of votes secured by him would show that the election has not been affected by any of the irregularities alleged and as such the petitioner is not entitled to any relief.

9. Respondent No. 2 Sri Simhadri Misra filed counter stating that the election in question was unfair and was not held strictly in accordance with the rules. He, however, withdrew from the contest at the hearing of the petition.

10. Respondent No. 3 filed a supporting counter.

11. Of the four newly added respondents, respondent No. 6 Sri Pakula Gonda filed counter and the other three respondents have filed more. Respondent No. 6 is the supporting respondent and like respondent No. 1 he has challenged the validity of the petition and has questioned

the propriety of the addition of parties after time. He submits that he and the entire constituency have acquired a valuable right in that their chosen representatives respondents Nos. 1 and 3 were duly declared elected and their election was not questioned by any valid and proper petition under the Representation of the People Act. According to him the allegations in the petition as well as in the list of particulars are all mostly false and without any justification and there are no valid and reasonable grounds for declaring the election of any one of the returned candidates void or the entire election wholly void. Respondent No. 3 and the above four newly added respondents allowed the proceedings *ex parte*.

12. On the pleadings of the petition and according to the list of particulars attached to the petition, the corrupt and illegal practices resorted to by respondent No. 1 are the conspiracy of respondent No. 1 with the Chief Forest Officer of Jeypur in issuing a circular regarding the collection of seigniorage rate for forest produce, secondly respondent No. 1's utilising his position as a Minister in the matter of securing assistance for his election from the Government Officers and the estate officials, thirdly augmentation of the quota of supply of cloths and iron rums for the constituency immediately preceding the election and also during the election. Beyond the petition but covered by particular Nos. 11 to 13 there are allegations of threat and intimidation resorted to by respondent No. 1's agents and workers in course of general preaching and while canvassing at the polling booth on behalf of respondent No. 1 and thus free exercise of electoral rights of the electors was unduly influenced. The charge of conspiracy and utilising the position as a Minister of the State were meant to be canvassed at the hearing and so issues 1 and 2 on the point were framed. So far as the augmentation of supply of quota of cloths and iron rums for the constituency, the pleadings are without sufficient particulars to connect respondent No. 1 therewith and no issue on the point was either desired or framed. In respect of the allegations of threat and intimidation contained in paras 11 to 13 of the particulars, no issue was framed at the stage of first hearing, the points involved therein being not covered by petition but in course of the trial letting in of evidence on the points raised in particular Nos. 11 to 13 was considered desirable. Accordingly after the close of the trial and in course of the argument issue No. 12 was amended and the corrupt practices referred to in particular Nos. 11 to 13 have been taken up for consideration along with the corrupt practices covered by issues 1 and 2 and dealt under issue No. 12. Certain illegalities in the conduct of the election proceeding have been averred to both in the petition and in the particulars and they are issue of circulars or posters bearing no names and address of the printers and publishers, refusal of the petitioner's polling agents to enter the booth at one place on the first day of polling, changing of the order of the boxes during the polling at one particular booth and the removal of the seals of the petitioner's agent on the ballot boxes covered by issues 3 to 6 respectively. Issue Nos. 7 to 11 relate to the points of law involved in the case and the reliefs claimed in the petition. Thus the issues in the case finally stand as follows :—

1. Whether respondent No. 1 conspired with the then Chief Forest Officer of Jeypur and had a circular issued by him not to collect enhanced seigniorage for forest produce of the Jeypore estate ?

2. Whether respondent No. 1 utilised his position as a Minister of Orissa State and got the assistance of the District Magistrate and the Officers of the Jeypur estate to make propaganda in his favour to help him in his election ?

3. Whether respondent No. 1 issued or caused to be issued any circulars or posters bearing no names and address of the printer and publisher ?

4. Whether the Presiding Officer of Purniguda booth did not allow Ramachandra Patnaik the polling agent of the petitioner to enter the booth on the first day of polling and what is its effect on the result of the election ?

5. Whether the Presiding Officer of any booth changed the order of the boxes during the polling so as to cause any confusion and if so what is its effect ?

6. Whether the seals of the petitioner's agent at one of the booths were missing ?

7. Whether the election is wholly void ?

8. Whether the election of respondent No. 1 is void ?

9. Whether the petitioner is entitled to be duly elected ?

10. Whether the petition is barred by time for the reason that respondents Nos. 4 to 7 were added at a later stage on 5th January 1953 ?

11. Whether the petition as presented originally is not in accordance with law and therefore not maintainable ?

12. Whether the election to the Orissa Legislative Assembly from the Nowrangpur Constituency has not been a free election by reason of the corrupt practices, undue influence and coercion referred to in issues 1 and 2 and threat and intimidation referred to in paragraphs 11 to 13 of the list of particulars ?

FINDINGS

13. *Issue No. 1.*—This issue relates to the alleged conspiracy of respondent No. 1 with the Chief Forest Officer of Jeypur in collusion with whom it is said a circular was issued not to collect the enhanced seigniorage rate for the forest produce of the Jeypore estate. Paragraph 10 of the petition and particular No. 1 of the list of particulars contain the necessary pleadings on the point to the effect that Notification No. 176, dated 15th December 1951, was published in the Orissa Gazette (Forest Supplement) enhancing the seigniorage rates for timber and other forest produce of Jeypur estate, that in pursuance thereof enhanced tax was realised from certain persons on 20th December 1951 and that there was widespread discontentment among the people resulting in anti-congress feelings among the electors. To negate the effect of the enhanced seigniorage rate, to allay the feelings and to further the election prospects respondent No. 1 conspired with the Chief Forest Officer in consequence whereof a confidential circular was issued to all forest officers directing to realise seigniorage at the old rate until further orders. Respondent No. 1 and his agents and workers thereafter told the electors that respondent No. 1 had got the notification rescinded and thus indulged in corrupt practice of mass bribery and exercise of undue influence on the free exercise of electoral rights. Respondent No. 1's counter on the point is contained in paragraph 6 (a) and (b) of the written statement. The counter in substance is that on 15th December 1951 the notification in question was published whereunder a higher fee was to be charged in respect of various produces by the officials of the Jeypur estate. In course of his tour in the constituency he got complaints regarding the increase of the seigniorage rate and he promised to look into it and he therefore instructed the Range Officer, Nabrangpur to wire to the Chief Forest Officer to meet him at Jeypur on the 20th. He was not able to meet the Chief Forest Officer till the morning of 21st as he did not reach Jeypore till 2 A.M. on the 20th and when he met him he was told by the Chief Forest Officer that he had already, even on the 19th, issued a circular instructing the Range Officer to charge only at the old rate and not at the new rate as there was no time to verify the published new rate with the proposed rate and as the news of the increased rate was a surprise to the people. In short, respondent No. 1 did not conspire with the Chief Forest Officer for keeping the enhanced rate in abeyance nor did he or his agents or workers tell the voters that respondent No. 1 got the aforesaid notification rescinded. Whatever action was taken by respondent No. 1 in the matter was done in the exercise of official right vested in him and without any intention to interfere with the electoral right of the voters.

14. The oral evidence on the point at issue is that of the petitioner (P. W. 13) alone. It speaks of petitioner's presence in the meeting at Omarkote addressed by respondent No. 1 where the people objected to the enhanced rate of seigniorage and respondent No. 1 gave an open assurance that he would reduce the rate. The verification attached to the petition is that all the paragraphs contained in the petition are true to the information received and believed to be true and consistently the fact above deposed to which is alleged to be within the personal knowledge of the petitioner cannot find a place in the petition and has as a matter of fact not been mentioned. The petitioner however wants to emphasise his evidence on the above fact saying that he stated the fact of his presence in the meeting to his lawyers at Cuttack and the lawyers did not incorporate it in the petition and in the particulars and he too did not insist on the insertion as other facts mentioned in the petition were in his opinion sufficient to cover the personal assurance given by respondent No. 1. In the four corners of the petition and the particulars, no mention being made about respondent No. 1's open assurance to the voters in the meeting to reduce the rate and the petitioner's statement that he had heard respondent No. 1 saying to the voters in the meeting that he would reduce the rate being an embellished story, little or no importance need be attached to the oral evidence of the petitioner as above.

15. What we are left to consider is if the non-enforcement of the enhanced seigniorage rate is the result of conspiracy alleged against respondent No. 1 the Revenue Minister of the Orissa State or an act done by the estate officials in the usual course of their official business. The notification No. 176, dated the 15th December 1951 whereby enhanced seigniorage rate was proposed to be realised was published in the Orissa Gazette (Forest Supplement) dated 15th December 1951. The gazette Notification was received by the General Manager of the Jeypur State (P. W. 1) and by the Chief Forest Officer of the estate (P. W. 3) on 18th December 1951. The rangers of the estate are supplied with the gazette copies i.e., the forest supplement direct from Chatrapur and the particular notification accordingly was received by them direct and not through the Chief Forest Office. The rangers in pursuance of the Notification, dated 15th December 1951 had collected enhanced seigniorages in nearly half a dozen cases and in the mean time the circular of the Chief Forest Officer Ex. 15 dated 19th December 1951 stopping collection of enhanced fees was received and collection at the new rate was stopped. Referring to the gazette publication dated 15th December 1951 about the enhanced seigniorage rate, the collection of such rate in a few cases by the Rangers and the stoppage of collection later on receipt of the Chief Forest Officer's circular Ex. 15 dated 19th December 1951 by the Rangers, it is said on petitioner's side that respondent No. 1 the Revenue Minister of the State conspired with the Chief Forest Officer in the matter of non-enforcement of the notification and got the circular Ex. 15 issued in collusion with the said forest officer with a view to further his election prospects. As already said respondent No. 1's counter is that he had nothing directly to do with the seigniorage fee chargeable for the forest produce of Jeypur and it was wholly within the jurisdiction of the officials of the estate and of the Board

of Revenue. He simply came to know about it in course of his tour in the constituency, met and had a talk about it on the 21st morning with the Chief Forest Officer who informed him that he had already on the 19th issued a circular instructing the Range Officers to continue collecting the old rates as the time for the introduction of the new rates was inopportune and that there was no sufficient time to verify and compare the two rates. The Chief Forest Officer P. W. 3 has been examined on the petitioner's side and from his cross examination by respondent No. 1's advocate we get it that in consultation with the General Manager P. W. 1 in the morning of 19th December 1951 he issued the circular Ex. 15, dated 19th December 1951 keeping the enforcement of the new rate in abeyance. He has also told us in cross examination that he had not the time to verify the gazette notification with the original proposal and also to study if the time was opportune to introduce the change. In a line with the above evidence we find the memo. attached to the circular Ex. 15 referring to the Chief Forest Officer's personal discussion with the General Manager and the circular itself mentioning the cause for postponement of the new rate as detailed verification and comparison had not been done with the original report. Notwithstanding the sworn denial of respondent No. 1 who is R. W. 7 that he had conspired with the Chief Forest Officer on 19th December 1951 to issue the circular Ex. 15 dated 19th December 1951 and not withstanding the evidence of the Chief Forest Officer that he on his own initiative and after discussion with the General Manager had issued the circular directing non-enforcement of the new rate it is urged on petitioner's side that respondent No. 1 as the Revenue Minister of the State got the notification rescinded having conspired with the Chief Forest Officer and gave out to the electors that he had got the notification rescinded and thus influenced the free exercise of electoral rights. In the first place, it is to be remembered that the petitioner is not consistent as to the date of the alleged conspiracy, the averment in paragraph 10 of the petition being that the confidential circular was caused to be issued on 20th December 1951 and the averment in the particular paragraph 1 being that it was issued on 19th December 1951. As already said before the petitioner has no personal knowledge about the fact that the Minister respondent No. 1 had assured the voters that he would reduce the rate though such a fact was attempted to be said in evidence for the first time. The whole structure of the petitioner's case on the point seems to be based on the fact that closely following upon the issue of the circular dated 19th December 1951 by the Chief Forest Officer, Jeypur estate, the respondent held his tour in the constituency and got information about the publication of the enhanced seigniorage rate, promised to look into the matter and finally met and talked to the Chief Forest Officer in the matter on the morning of 21st to be informed that the enforcement of the new rate had been kept in abeyance. What is further sought to be shown to strengthen the charge of conspiracy is the fact that the respondent No. 1 happens to be the Revenue Minister and the forest fees are matters dealt in the Revenue Department of the Government. On the factual aspect of the matter, *vis.*, that the impugned circular was issued on 19th December 1951, that the Revenue Minister respondent No. 1 met the Chief Forest Officer at Jeypore on the morning of 21st December 1951 and that the Chief Forest Officer had previously issued the circular on his own initiative and that before his meeting with the Revenue Minister, we have the statement of respondent No. 1 the Minister and the Chief Forest Officer P. W. 3 and those statements in the absence of serious challenge on the petitioner's side stand to weigh with any court of justice. That is, on the facts involved in the point we accept respondent No. 1's unchallenged statement as representing the true state of things and the petitioner has failed to prove that there was conspiracy between the respondent No. 1 on the one hand and the Chief Forest Officer on the other either on 19th December 1951 or on 20th December 1951 in the matter of issuing the circular Ex. 15.

16. Next we come to examine the question how far respondent No. 1 as the Revenue Minister is connected with the levying of the enhanced rate. Here the evidence of respondent No. 1 is material for our consideration as consistent with his position, he is supposed to make a statement with full sense of responsibility. Respondent No. 1 in his statement to Court's question has said as follows :

" The enhanced seigniorage rate was sanctioned by the Revenue Board and it was not referred to the Government in the Ministry of Revenue Department. I did not deal with the subject as Minister of Revenue Department."

In cross examination by the petitioner's lawyer respondent No. 1 has also said that the matter was never placed before him at any time nor did he ask the Board of Revenue anything about it. He has also said that till he left the District after election, he did not take any step in the matter of the cancellation of the notification *i.e.*, suspending the operation of the notification. It is pertinent to note here that the increase of seigniorage rate in Jeypore estate was done under Rule 7 of the Jeypur Forest Rules and with the previous sanction of the Board of Revenue. Rule 7 of the Forest Rules says that the Agent to the Governor by notification in the District Gazette fixes rates from time to time for each kind of produce. It also says that nothing therein stated shall prevent the officer in charge of the forest accepting with the sanction of the rajah any lower rates than those fixed by the Agent to the Governor. The proposal for the enhanced rate was made during the time when the Maharajah of Jeypore was on the throne and the General Manager P. W. 1 was the Dewan of the estate. This we get from the Chief Forest Officer P. W. 3 and from the letter Ex. 1 addressed by the Dewan in this connection on 9th January 1951 Ex. 1 to the Collector, Koraput. The levying of the enhanced rate as notified in the District Gazette was thus a matter directly within the jurisdiction of the officials of the estate and the final authority in the matter was the Maharajah of the estate who was then alive. In April 1951, the Maharajah died and the estate came under the

management of the Court of Wards. The Orissa Court of Wards Act 1947 has since become applicable to the estate and according to the said Act, the Court of Wards for the estate is the Revenue Commissioner and now the Board of Revenue since constituted. Thus the reply given by respondent No. 1 to Court's question that he did not deal with the subject as Minister of the Revenue Department but the enhanced rate was sanctioned by the Revenue Board and that it was not referred to the Government fits in with the forest Notification Ex. 2 read with rule 7 of the Forest Rules.

17. It is to be examined now if the notification of the enhanced rate and withdrawal of the said notification was an act done by the estate officials in the usual course of their official business. Ex. 1, letter dated 9th January 1951 addressed by the Dewan Jeypur estate to the Collector is the proposal for the seigniorage rate. On receipt of the recommendation for enhancement, the District Office, Koraput opened the file, examined the matter and sent the revised rates for publication to the Press Officer, Ganjam, in September 1951. In December 1951 as per the Gazette Notification dated 15th December 1951, the revised rate was published in the Orissa Gazette (Forest Supplement) and copies thereof were sent to the General Manager, Chief Forest Officer and all the 15 Rangers for doing the needful. It is when the notification reached the General Manager (P. W. 1) he stopped giving effect to it and in usual course got the abeyance order published in the Orissa Gazette (Forest Supplement) and withdrew the revised rate. The General Manager who as Dewan recommended the enhancement and subsequently as General Manager got the notification rescinded has been examined by the petitioner's side as P. W. 1 and cross examined by respondent No. 1. In his examination in chief he has stated that the enhanced rate was not given effect to and the reason for non-enforcement has been elicited from him in the further questions put to him by the petitioner after cross examination by respondent No. 1. The reason underlying the order of abeyance has been stated by P. W. 1 that he had got confidential reports from his subordinates and that he had private information that in case the enhanced rate was enforced there was the possibility of no-tax campaign being launched. The General Manager was further asked by the petitioner's lawyer if the apprehension of the non-payment of revenue had been communicated to the authorities and in reply to that he referred to Ex. 3 dated 14th June 1952 the letter written by him to the Collector. First coming to Ex. 3 the letter, it is seen that the General Manager at first had the impression that the increased rates would affect mainly the business people who were making much profit out of the timber trade in Koraput District but later such impression was removed and he felt that the enhanced seigniorage rates will also affect the people in general. Therefore his recommendation for postponement of the revised seigniorage rate is supported by the following reason as quoted from his letter Ex. 3 :

"The inhabitants of Jeypore Estate, being mostly aboriginals, are of an inflammable type and not only raise objection to, but may carry on serious agitation against the enhancement of seigniorage rates. The land revenue collections of the estate have already been affected adversely by the agitation for commutation engendered by the Congress Party. I was given to understand that any enhancement of the seigniorage rates would also similarly create dissatisfaction in the minds of the people and might even lead to non-payment of land revenue not to speak of forest royalties."

The petitioner's learned pleader is not prepared to accept the above evidence of the General Manager on its face value and wants to import into it the spirit of collusion which according to him prompted the General Manager to drop the new rate by giving out imaginary causes for abeyance. It becomes necessary to see if really the General Manager was actuated by such a motive as alleged or the exigencies of the estate really required the postponement of the new rate. The Maharaja of Jeypore died some time in April 1951 and the estate came under the management of the Court of Wards with its Dewan Sri Gopinath Behara appointed as the General Manager under the Court of Wards. Though as Dewan Sri Behara had made the recommendation for enhanced seigniorage rate in January 1951 in his letter Ex. 1 addressed to the Collector, Koraput, and though some time in September 1951 the rates were sent to the Press at Chatrapur for publication, just preceding the gazette notification and receipt of the same at Jeypur on 18th December 1951 a very important strategic event occurred and that event is the appearance of Srimati Kumarika Pattamani Debi within Jeypore Estate, in the first week of December 1951. This we get from the General Manager's letter Ex. 8 (a) dated the 17th December 1951 addressed to the Collector. The letter Ex. 8 (a) says that not only Srimati Pattamani Debi had arrived at Jeypore on or about the 7th December and toured in the estate for about ten days but the propaganda carried on by the Ganatantra Party on behalf of Pattamani Debi was of a serious nature. It says that the people had been misled into a belief that she will be succeeding to the estate and the propaganda was likely to create trouble in the collection work. We get it from the evidence of the General Manager that Srimati Pattamani Debi raised objection to the accession to the Gadi by late Vikram Deb Varma in 1931 and this resulted in a state of rebellion and non-payment of revenue. We also get it from his evidence that he apprehended recurrence of the self-same trouble in 1951 when Srimati Pattamani Debi began her second campaign. The above evidence of the General Manager read with his letter Ex. 8 (a) addressed to the Collector shows unmistakably that the General Manager on the advent of Kumarika Pattamani Debi on or about 7th December and her holding tour within the estate for ten days became apprehensive and forthwith wanted the suspension of the order for enhanced seigniorage, lest that might inflame the inhabitants of the estate and result in a campaign of non-payment of revenue. The genuineness of the fear of the General Manager is indicated by the fact that on the morning of 19th December 1951 the General Manager had consultation with the Chief

Forest Officer and though the notification was received by them on 18th December 1951, the two wanted abeyance of the enhanced rate forthwith and accordingly the two conferred and circular Ex. 15 dated 19th December 1951 to all Range Officers was issued by the Chief Forest Officer suspending operation of the notification in consultation with the General Manager. (*Vide* evidence of P. W. 1 and 3). To contend that the apprehension of the General Manager was not a genuine one and that it has been brought in to screen the Revenue Minister who actually gave orders for suspension of the operation of the notification, the petitioner's lawyer advances the argument that the Ganatantra Party was in the field long before the suspension of the order in December 1951 *i.e.*, from the middle of 1950 and the General Manager had nothing to fear from the action of the said party far less from its patron Srimati Kumarika Pattamani Debi coming to the estate and holding tour and secondly the final withdrawing of the order of the revised rate was under the orders of the Revenue Minister *viz.*, respondent No. 1 and not by the estate officials themselves. The Ganatantra Party had no doubt begun working within the estate since September 1950 as evidenced by the confidential circulars Ex. 5 and 5-a issued by the Dewan Jeypur to all Divisional Managers but the movement was greatly accentuated by the advent of Srimati Pattamani Debi to Jeypur on or about the 7th of December 1951. This we get from the confidential circular issued by the General Manager on 17th December 1951 Ex. 4. In the last but one paragraph of Ex. 4 it is said that the propaganda on behalf of Srimati Pattamani Debi had resulted in creating an impression in the mind of the people that she would be coming soon as successor to the late Maharaja aheh. Prior to the issue of the circular on 17th December 1951, the General Manager had got sent about Kumarika Pattamani Debi's visit and therefore he wrote the letter dated 6th December 1951 to the Collector Ex. 8 seeking instruction as to how the mischievous propaganda of the Ganatantra party should be counteracted. The Collector wrote a confidential D. O. Ex. A to the General Manager suggesting issue of circular by the General Manager if considered necessary. It is only after receipt of Collector's D. O. that Sri Behara the General Manager issued the circular Ex. 4 and informed the Collector the fact of his having done so in his letter Ex. 8-a dated 17th December 1951. The advent of Srimati Pattamani Debi on or about the 7th December 1951 being an undisputed fact, the nature of the propaganda of the Ganatantra Party having undeniably taken a serious turn after her appearance within the state and the rising of 1931 in the state having had its origin in the agitation created by the said Pattamani Debi we honestly feel that the keeping of the seigniorage rate in abeyance was done in good faith by the General Manager as he apprehended a fresh agitation for non-payment of revenue in the wake of the collection of the revised rate.

18. Next we are to see if the suspension of the operation of the notification is the creation of respondent No. 1. Respondent No. 1 who is R. W. 7 has stated in a most straightforward manner that in course of his tour he was told of the enhanced rate by the people and he promised them to look into it. By the time he met the Chief Forest Officer and came to know all about it, the Chief Forest Officer had issued the circular suspending collection of the new rate and nothing further had to be done in the matter. This statement of respondent No. 1 deserves due weight not for the fact that he happens to be the Minister of the State but that there is no rebuttal of these facts on the petitioner's side. What is sought to be said by the petitioner's lawyer in connection with the above evidence of the respondent is that why of all persons he interested himself in the matter if the enhanced rate is no concern of his department and secondly why the final orders withholding the notification was concurred to by him. Respondent No. 1 as Minister of the State was holding the tour in his constituency at the time and the inquiry made by him from the Chief Forest Officer and the assurance, if any, given by him to the people are actions done in the exercise of official right vested in him and no motive can be attached to it merely because he happens to be the Minister at the time. In his counter, paragraph 6-b, which is a reply to the averments of conspiracy it has been said that respondent No. 1 laid down a policy in a public matter, the matter referred to there presumably being the notification under consideration. Respondent No. 1 has explained in his evidence that the laying down of policy as referred to in para. 6-b of the counter has reference to his dictation of policy in all general matters as a Minister and nothing of the nature of public policy was to be laid down in connection with the enhancing or withdrawing the seigniorage rate. The above evidence of the respondent is quite in keeping with the actual state of things as the levying of enhanced seigniorage and the withholding of the same are matters which come clearly under the jurisdiction of the General Manager acting with the previous sanction of the Board of Revenue to which he is subordinate. In the office note of the District Collector's office Ex. 9 the then District Magistrate has noted that he had discussed the matter with the Revenue Minister on 1st June 1952 and then he recommended the General Manager's proposal to withhold the notification. Whatever be the note of the Collector in his office file, the matter has got to be judged on its own merits. The letter Ex. 3, dated 14th June 1952 written by the General Manager to the Collector contains request for postponement of the new rates and acting on that letter or report of the General Manager the abeyance order was published in the gazette with the sanction of the Board of Revenue. Had any action been taken by the Collector *suo motu* with the concurrence of the Revenue Minister, the note in Ex. 9 would have been sufficient to urge that the Minister had connived in the final withholding of the notification. But the General Manager's letter Ex. 3 dated 14th June 1952 read with the forest rules of Jeypur State and the provisions of the Court of Wards Act leaves no room for doubt that the final withholding was done on the General Manager's proposal to do it and not on any initiative taken by respondent No. 1 as Minister of the Revenue Department. To conclude the corrupt practice of conspiracy in the matter of issuing the circular Ex. 16 alleged against respondent No. 1 is not at all established and we have no hesitation in finding that respondent No. 1 did not conspire with the then Chief Forest Officer of Jeypore to issue the circular not to collect the enhanced seigniorage rate.

19. *Issue No. 2.*—The second type of corrupt and illegal practice alleged against the respondent No. 1 is that his success in the election was achieved with the assistance of the District Magistrate and the officials of the Jeypur estate who made propaganda on his behalf and helped him in his election. Before dealing with the particulars of the offence herein alleged it is necessary to clarify what type of official influence is meant to have been exercised in this case. As against respondent No. 1 who was also then a Minister of the State it is said that his tour was an election tour. As against the District Magistrate of Koraput under whose jurisdiction the constituency in question falls it is said that he held the tour with a view to influence the voters and thus helped respondent No. 1 the Minister. So far as the officials of the Jeypur estate are concerned, particular reference is made to the General Manager Sri G. N. Behera (P. W. 1) and his tours too are astigmatised as election tours undertaken mainly for the purpose of canvassing on behalf of respondent No. 1 the Minister. Respondent No. 1 as the then Minister of the State no doubt held tours during the months of November and December 1951 when election was at the door but to succeed in his contention, the petitioner, must prove that the tour was purely an electioneering tour. Respondent No. 1 in his evidence has told us that urgent files were sent to him for disposal during his tour and the officials used to see him now and then in course of his tour. The above evidence of respondent No. 1 taken on its face value shows that the tour was not altogether devoid of official tour. In Hammond's Election Cases Vol. I at page 394 the position of the Minister in regard to his tour has been discussed and we cite the following passage with advantage: "We are not aware of any rule requiring a Minister to resign office before offering himself as a candidate for re-election. We cannot therefore say that the respondent committed any irregularity in choosing to remain in office while conducting his election campaign. In the circumstances it was inevitable that he should to a certain extent, combine canvassing with official work. It was also inevitable that whenever he went out canvassing he should be attended "with all the prestige and powers of his high official position." We do not see how he could leave these behind so long as he was Minister, any more than he could leave his own shadow behind." In Jagatnarayan Lal's reports of Election Petitions Vol. II page 85 the same view in regard to the Minister's position has been taken and it is held that there is no rule of law requiring a Minister to resign his post before starting his canvassing nor is it illegal for a Minister to combine canvassing with his official duties. In the case reported in I. L. R. Cuttack 1952 Parts X and XI at page 574 the Honourable Chief Justice Das has expressed incidentally on the point as follows:—"In a system of elections where the Government-in-power continues in office during the elections, no Minister can abdicate his function, if the public exigencies demand it, merely for fear of being misunderstood." Side by side with the above legal position we have already got it that the petitioner's statement that respondent No. 1 as Minister gave assurance to the people to reduce the enhanced seigniorage rate at a meeting at Omarkote is beyond the averments made in the petition and the particulars. The well-established principle of election law requires full and complete particulars in the case of official undue influence. That not being done and the law having given respondent No. 1 the privilege as Minister to combine canvassing with his official duties no question of exercise of undue influence by the Minister respondent No. 1 can arise.

20. We next come to consider the undue influence alleged against the District Magistrate in course of his tour. In the first place it is to be pointed out that the official undue influence thus alleged is without the full and complete particulars as required by the law. In paragraphs 11 and 12 of the petition it is said that the Minister, respondent No. 1 utilised his power and position and procured the assistance of various Government Officers in the matter of carrying on active propaganda and those Government Officers resorted to acts of intimidation, coercion and threat in inducing and unduly influencing the electors to cast their votes in favour of respondent No. 1. In particular No. 3 no mention about Government officers is made and it has confined to the Range Officer, General Manager, Forest Moharirs and other employees of the Jeypur estate. Paragraph 4 of the particulars says that the District Magistrate with a many Government officers was moving about and was canvassing many electors for respondent No. 1. The polling agent of the petitioner one Sri Jagamohan Naik gave his objection in writing against the said canvassing to the presiding officer. Particular No. 4 is thus relevant so far as the exercise of undue influence by the District Magistrate is concerned. Curiously Jagamohan Naik the person alleged in the particular is not examined to substantiate the allegations of the petitioner. It shall therefore be said that the petitioner has furnished no particulars which he was bound to do under law. That apart, regarding the District Magistrate's interference there is the solitary evidence of P.W. 12 Abhimanyu Rath and it is in these terms in the examination in chief: "I had talked with the Taluk Magistrate Sri Sriram Mohanty, Dr. Samantara of Omarkote and the District Magistrate". In the cross examination his statements are, 'I cannot say the date on which I had talked with the District Magistrate Sri Merani but it was during the polling at Omarkote. Jagamohan Naik and another Patnaik were polling agents at Omarkote and they have heard the talk between we two. I cannot name any other person in this connection. I cannot say if Sri Merani had reported against me, under the Preventive Detention Act. Sri Merani was living in the Dak Bungalow and there in the Dak Bungalow the polling was done. Sri Merani had scuffle with me between 8 and 9 A.M. in the morning due to former's patting the votes and thereafter Sri Merani left the Dak Bungalow Sri Merani had come to the Dak Bungalow on the previous night." (The word "scuffle" underlined is the language used by the witness). It is not denied that Abhimanyu Rath P.W. 12 was detained under the Preventive Detention Act. Respondent No. 1's positive assertion in the counter is that this gentleman bore grouse against the District Magistrate Sri Merani as the latter

recommended his detention under the above Special Act. There is thus sufficient motive for Sri Rath's coming and making certain allegations against the District Magistrate Sri Merani. The conduct of this witness P.W. 12 is anything but fair. He came down from Gunpur after receipt of the T.M.O. of Rs. 25 from the petitioner as evidenced by the T.M.O. receipt Ex. H. 4 and the entry in the return of election expenses Ex. H. 5. But he denies that he came to Nabarangpur on receipt of the T.M.O. or worked for the petitioner. It is difficult to understand what type of man P.W. 12 is as he says that he is not in any way concerned with the election petition in question and has not helped the petitioner with any evidence though he calls himself as the General Secretary of the Gantantra Party to which party the petitioner belongs. Though he calls himself the General Secretary of the party, still he is not a member of the working committee of the District. He goes on to say that the party does not contribute anything towards his expenses and he spent for petrol, food etc., from his pocket. He was serving in Bastar State as an overseer and a case under Sec. 409 I.P.C. was started against him and he left the place, came home and styled himself as "Beer Abhimanyu". The statement of such a man that he had contacted Sri Merani or in his own words had "scuffle" with him is difficult to be believed particularly when two persons are named as witnesses to his talk with Mr. Merani and those two are not examined. The falsity of his evidence has reached its height when he offered his evidence regarding the incident at village Jatabal to which the General Manager (P.W. 1) is said to be a party and which occurred in the first week of December 1951. The petitioner P.W. 13 has told us that Rath P.W. 12 came after remittance of Rs. 25 and worked in the constituency thereafter which means that he came on the 30th or 31st December 1951 and not earlier. The witness however goes to the length of saying that he had come to Nabarangpur in the first week of December and saw the General Manager P.W. 1 at Jatabal and also heard him canvassing. To say the least P.W. 12 Abhimanyu Rath has made too many down-right false statements and one of them is that he saw the District Magistrate Sri Merani canvassing voters at Omarkote. While dealing with the question of canvassing by the Government officers reference may be made to the Taluk Magistrate, Sri Sriram Mahanti and other Magistrates Dr. Samantara and the Special Assistant Agent who according to the witness P.W. 12 did the canvassing for Respondent 1. The canvassing by Government officers other than the District Magistrate is not a point at issue. That apart, passing reference is made to the Taluk Magistrate, other Magistrates the Doctor at Omarkote and others and that in the absence of full particulars can hardly be taken up for consideration in this case. It remains to be seen if the District Magistrate's tour at the time of election by itself amounts to undue influence by officials. Under Sec. 123 Cl. (8) of the Representation of the People Act there must be interference or attempt to interfere with the free exercise of electoral right by the Government servant to make the offence a major corrupt practice. The District Magistrate held the tour in discharge of his official routine duties and the freedom of the voters can thus by no means be said to have been interfered with. On this question of fact the particulars being absolutely nil, the petitioner cannot be heard to say that the District Magistrate used undue influence by holding tour in the constituency during the days of polling specially when the only one instance alleged in evidence has not been proved.

21. It remains next to be seen in what way the General Manager (P.W. 1) interfered or attempted to interfere with the free exercise of the electoral right by the voters of the constituency. In the first place it is said that the General Manager Sri Behera though in the employ of the Court of Wards is still a Government servant to come under the mischief of sec. 123 (8) of the Representation of the People Act. That is P.W. 1 though has retired and has been re-employed under the Court of Wards as the General Manager still he is a public servant within the meaning of Sec. 21 and thus comes under the category of Government servants referred to in Sec. 123 (8) of the Representation of the People Act. Sri Behera has deposed that as Dewan of Jaypore estate he was drawing his salary from the estate fund. He as General Manager was also drawing his pay from the estate. In cross examination he has further stated that prior to the merger of the Zamindari on 29th December 1951 all the estate officials were being paid out of the funds of the estate. Under Sec. 21 Cl. 9 I.P.C. every officer in the service or pay of the Crown is a public servant. Sri Behera's drawing pay from the estate fund thus takes his case out of the category of Government servant dealt under Cl. 9 of the section. The petitioner's pleader urges that under Sec. 32 of the Orissa Court of Wards Act 1947 every guardian, Manager, or other servant of the court shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code and as such the General Manager is a Government servant for all practical purposes. In this connection he refers to the case reported in I.L.R. XXI Allahabad page 127 where it has been held that the manager of an estate employed under the Court of Wards is a public servant. The contrary view has been taken in the cases reported in I.L.R. 7 Madras page 17, I.L.R. 28 Calcutta page 344. In the Allahabad case it has been held that the provisions of the 9th clause of Sec. 21 of the I.P.C. are wide enough to include the case of Court of Wards' employees. But what weighed with his Lordship to hold as above is that neither Act XIX of 1873 (N.W.P. Land Revenue Act) nor any other Act applicable to those provinces contained any provision similar to the one contained in the Court of Wards Act. Here Sec. 32 of the Orissa Court of Wards Act 1947 says that the Manager shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code and this clearly shows that the provisions of Sec. 21 of the Indian Penal Code were not sufficient to cover the case of Court of Wards' employees and the provision of the said section were extended to such employees by express legislation. Thus the Allahabad decision is distinguished and reliance is placed on 7 Madras 17 and I.L.R. 28 Calcutta 344 to hold that the General

Manager is not a Government servant as contemplated by Sec. 123 (8) of the Representation of the People Act and is merely a public servant within the meaning of Sec. 21 of the Indian Penal Code. It we hold that the General Manager P.W. 1 is not a Government servant. Sec. 123 (8)- of the Representation of the People Act has got no application to treat his tour and even his canvassing if any, as amounting to exercise of undue influence by officials.

22. Even if the General Manager, P. W. 1 does not conform to the class of Government servants contemplated under Section 123 (8) of the Representation of the People Act still his actions need to be judged, the allegations against him being that he did propaganda on behalf of respondent No. 1. The actions of the other estate officials referred to in the petition similarly have got to be considered incidentally as similar allegations of propaganda are there. Section 123 (8) of the Representation of the People Act is the only section which can be said to cover the cases of estate officials, is at all it does. It speaks of obtaining or procuring the assistance from any person serving under the Government of India or the Government of any state. It seeks to penalize the candidate, his agent or any other person acting with the connivance of the candidate or his agent. As already said the General Manager is not a Government servant far less the other estate officials who all are paid from the funds of Jeypur estate. The only question is if the General Manager or the other estate officials helped respondent No. 1 he being a Minister of the State. The General Manager, P. W. 1 was a District Magistrate and before retirement his services were lent to the Maharaja of Jeypur who engaged him as his Dewan. During the time P. W. 1 was continuing in foreign service as Dewan the Maharaja of Jeypur died in April, 1951 and on his death P. W. 1 became the General Manager under the Court of Wards. In the mean time P. W. 1's retirement fell due and as per the conditions of service he continued as General Manager under the Court of Wards after being re-employed and he is made Anchal Adhikari after the merger of the Zamindari since 29th December, 1952. Respondent No. 1 being the Minister in charge of the Revenue Department, P. W. 1's service thought lent to Jeypur estate, is said to be still directly under the Revenue Department and as such for all intents and purposes he is a subordinate of the Minister. It has been seen that P. W. 1 is being paid from the estate fund. P. W. 1 also has deposed here in court that respondent No. 1 never used his position as a Revenue Minister or in his individual capacity requested him for help in the last election. It is therefore, stretching too far to impute motive to P. W. 1 saying that he is a subordinate of the Revenue Minister. Apart from the question that P. W. 1's service indirectly comes under the Revenue Department it must be shown that respondent No. 1 needed P. W. 1's services or in other words he procured his services. The petitioner's averments in the petition are true to his information and belief and none of them is within his personal knowledge. Further, he has not said anywhere in his evidence that respondent No. 1 procured the service of P. W. 1, the General Manager. What is sought to be said indirectly is that after the death of the Maharaja respondent No. 1 the Minister of the State of Orissa and more particularly a resident of Korempur District whereunder Jeypur estate falls had set up his nominee to claim heirship to the late Maharaja and through P. W. 1 who became the General Manager of the estate furthered the cause of his election. It is both parties' case that succession to the estate of Jeypur is the subject of civil litigation in three suits filed by Shrimati Pattamani Debi in Vizagapatam District and the suits are proceeding even from before the time of the Maharaja's death. The present successor to the Maharaja the adopted son of the Maharaja is also made a party to the suit. It does not stand to reason to say that respondent 1 as Revenue Minister has set up his nominee to claim the estate as the adopted son of the late Maharaja and through the General Manager of the estate has attempted to further his election. If respondent No. 1's connection with the adopted son of the Maharaja is not shown to exist it is impossible to suggest that for that reason respondent No. 1 carried on propaganda of the estate more particularly in the Nabarangpur constituency through the General Manager of the estate. Certain documents of the Jeypur estate are brought on record and reference is made to them to make out a case of connivance. Such documents are Exs. 5, 5-a, 6, 7, 10, 10-a, 16, 18, and 19. Ex. 5 and 5-a are confidential circulars issued long before the election and they are dated September 1950. All that these two documents speak is that in the propaganda of the Maharaja of Kalahandi's party i.e. of Gantantra Party which was started on the advent of the Maharaja of Kalahandi to Jeypur the estate officials were forbidden to take part on pain of severe punishment even amounting to dismissal. P.W. 1 as the then Dewan was in duty-bound to exercise control over the estate officials and under the orders of the Maharaja he issued these two circulars. Further the two documents do not smack of any collusion whatsoever with the Congress party or its nominee the respondent No. 1. Ex. 6 is the order of the General Manager asking the Range Officer of Omakote or K. Venkatarao to hand over charge at Omakote immediately and to report himself to duty at Jeypur on suspicion that he was taking part in politics. Ex. 7 is the report of the said officer after having carried out the orders. Ex. 6 and 7 instead of proving collusion by the General Manager speak of his absolute indifference to the success of any of the candidates of the different parties contesting the election. As per order Ex. 6 the Forest Officer was asked to come to Sadar till the election was over and that only speaks of the General Manager P.W. 1 being a no-party man. Ex. 10 is the telegram purporting to have been sent by the General Secretary Ganatantra Parishad on the eve of the polls to the District Magistrate Koraput informing that the General Manager was starting for congress propaganda, Ex. 10-a is the post copy of the telegram. We do not know who is the General Secretary who purports to be the sender of the telegram. If P.W. 12 who styles himself as General Secretary is taken to be the sender he is not put a word about the telegram. Thus Ex. 10 by itself is no substantive evidence. Ex. 10-a the post copy is signed by the

petitioner instead of by the Secretary. The signing of the post copy by the petitioner only shows that in the name of the Secretary he sent the telegram Ex. 10. Further, Ex. 10.a is not referred to by the petitioner in his evidence. Thus Ex. 10 and 10.a hardly go to prove the General Manager's connection with the Congress Party. Then again the General Manager's starting for congress propaganda as wired to the District Magistrate does not prove his working for respondent No. 1. Ex. 16 is the letter written by P.W. 4 the then Head Clerk of Nabarangpur Thana. It was sent to the Revenue Inspector, Jagannathpur informing him that the Naiks of two Mustajari villages were conspiring with Sri Harihar Misra and the Revenue Inspector was asked to watch their movement. Said Sri Harihar Misra is P.W. 11 and he is the sitting member of the Assembly returned from Jeypur Constituency on Ganatantra Party ticket. If the Huzur Office got information that Naiks of certain villages were conspiring with P.W. 11, P.W. 4 the Head Clerk was competent to take action on those Naiks through the Revenue Inspector. Any way Jagannathpur is outside the Nabarangpur constituency with which we are concerned and is in Jeypur constituency. Ex. 16 does not in the least prove the complicity of the General Manager P.W. 1. Ex. 18 is another letter purporting to have been written by Sri Bidyadhar Singh Deb and it is addressed to the Revenue Inspector, Jagannathpur with similar complaint against a particular Naik. Sri Bidyadhar Singh Deb was contesting the seat for Jeypur constituency with P.W. 11 Harihar Misra and it might be that the action of the particular Naik was taken exception to by the former as Naiks are holders of service land under the estate and Bidyadhar Singh Deb happens to be the son-in-law of the Maharaja. Ex. 16 and 18 are innocuous documents and they are hardly of any help to the petitioner to prove that the General Manager was taking part in the election for the success of respondent No. 1. Ex. 19 is the letter written by P.W. 11 Sri Harihar Misra to the petitioner. The petitioner does not say a word about it. The action suggested in Ex. 19 has not been taken by the petitioner nor any reply to the letter has been sent by the petitioner. In the circumstances Ex. 19 is another innocuous document in as much as the petitioner who was asked to give details of the canvassing done by the estate officials kept silent over it and did not come forward with any direct allegation. Lastly it is alleged against P.W. 1 that he canvassed for respondent 1 at a village called Jatabal in the first week of December taking advantage of the gathering of the villagers, watching the arrival of the Maharaja of Kalahandi the main worker of the Ganatantra party. At the very beginning it must be said that the Jatabala incident does not find place either in the petition or in the particulars. No suggestion whatsoever is made about it to P.W. 1 the General Manager when he was in the witness box. P.W. 12 Abh manyu Rath is examined to depose about the incident but previously we have stated that P.W. 12 is telling lies both about the District Magistrate Sri Marani's canvassing the voters at Omarkote and the General Manager's canvassing at Jatabal on behalf of respondent No. 1. So P.W. 12's evidence is left out of consideration. The other witness who has been examined to speak about the Jatabal incident is Sheikh Sultan Sahib P.W. 10. This witness says that he did not work for any party far less for the Ganatantra party but the receipt Ex. H. 3 shows that he worked for the Ganatantra party and was paid Rs. 20 for working for a period of one month. To avoid the fact of the receipt of money towards remuneration he has gone to the length of saying that the money related to the excess price of medicine sent by him to the President of Ganatantra party one A. R. Khan and received back from said A. R. Khan. What this witness has told us with regard to Jatabal incident is that the General Manager asked the people to consider the case of the son-in-law of the Maharaja who had joined the Congress and not to be led away by the fact that Maharajahs and Rajahs had formed the Ganatantra party. By the son-in-law of the Maharaja is meant Sri Bidyadhar Singh Deb who is residing in the palace of the Maharaja. If the General Manager had at all put in a word in favour of the Maharaja's son-in-law that cannot be taken into consideration while considering the case of the respondent No. 1 who was contesting the election from a different constituency on congress ticket. The Jatabal incident not having been mentioned the petition and the particulars, secondly P.W. 1 the General Manager himself being not asked anything about it and P.W. 12 Abhimanyu Rath one of the witnesses examined on the point being found to be a brazen-faced liar and P.W. 10. Sk. Sultan Sahib too having taken precautions to suppress the truth, the alleged incident at Jatabal is not proved and we hold that incident to be a got up story. In this connection, reference may also be made to the General Manager's circular Ex. 4 which is referred to in particular No. 2 of the petition. The General Manager issued Ex. 4 to his subordinates requiring them to report the reaction of the visit and tour of Srimati Pattamani Debi. As already said, Srimati Pattamani Debi was a menace to the estate she having brought about unrest and rising in 1931 among the tenants, when the late Maharaja Vikram Deb Varma ascended the throne. The visit of such a personage to the estate and that at a time when Ganatantra party men were carrying on their election propaganda saying that success of Ganatantra party candidate meant accession of Srimati Pattamani Debi to the Gadi of Jeypur was bound to put the General Manager on his guard and the circular Ex. 4 was therefore issued with a view to safeguard the interest of the minor Raja and to ensure proper collection of rent. The circular speaks nothing about the election which was to take place within a fortnight's time from the date of its issue and it is going against the document itself to say that the General Manager P.W. 1 connived at the election of respondent No. 1 by issuing the circular Ex. 4.

23. The two other estate officials referred to on the petitioner's side as canvassing on behalf of respondent No. 1 are the Forest Officers of Omarkote and Raigarh. The Range Officer canvassing at Omarkote is named as K. Venkatarao while no mention of the name of the other forest officer is made in the petition or in the particulars. The forest officer of Raigarh has been stated in evidence as the forester and his name is stated as Apparao (*vide* P.W. 6) Narayana Jena. On the

respondent's side Raghunath Beverta R.W. 2 is examined. He was polling agent at Raigarh for respondent No. 1. He has said that at Raigarh the forest officer or forester was Venkatarao. Therefore P.W. 6's evidence that Apparao was the forester and that he canvassed at Raigarh polling booth cannot be believed. Regarding the fact that the Range Officer, Omarkote had canvassed and that the said Range Officer was K. Venkatarao there is no evidence adduced on petitioner's side. Thus of the two forest officers mentioned on the petitioner's side, one only is named as K. Venkatarao and the said gentleman's connection with respondent No. 1's election has been disproved by the evidence of R.W. No. 2 who has said that Sri Rao did not canvass at Raigarh. Apparao who according to P.W. 6 was the forester at Raigarh and did the preaching for respondent No. 1 is according to the evidence of R.W. 3 the treasurer of H. Deer & Company and not the forester of the Jeypur estate and did not attend the polling booth at Jhadigam. We therefore get it that Venkatarao, Range Officer did not canvass at Jhadigam polling booth and the forester Apparao who is alleged to have done canvassing at the said booth is not the forester but treasurer of H. Deer Company; the officer at Omarkote who is alleged to have preached on behalf of respondent No. 1 is neither named nor his activities are proved by evidence. In such state of evidence, it is nothing but presumptuous to say that the estate forest officer canvassed at the election of respondent No. 1. In particular No. 3 reference is made to Omarkote Kanungo, forest mohorir and forest revenue employees but, nothing is said about any one of these persons in the evidence.

24. Apart from the question if the District Magistrate and the officers of the Jeypur estate helped respondent No. 1 in his election by their propaganda and canvassing we come to consider the merit of respondent No. 1's claim to be elected from the constituency and that of the petitioner the candidate of the Ganatantra party. P.W. 10 Sheikh Sultan Sahib has given the highest encomium to respondent No. 1 and it will speak for itself: "Respondent No. 1 is a man of very rich and respectable family of Nabarangpur and he sacrificed a lot and went to jail many a time. He is liked by the majority of the people of his constituency. Respondent No. 1 was elected M.L.A. from the constituency both in 1937 and 1946". The merit of the Ganatantra party candidate *viz.* the petitioner however depended on the strength of the Ganatantra Party and this is what we have got from the evidence led on the side of the petitioner. P.W. 11 Sri Harihar Misra is the President of the Ganatantra Parishad of the District and he was in charge of selection of candidates for the party and was doing the propaganda work of the party. He has said towards the end of his cross examination that Dr. Vikrama Deb Varma came to the Gadi of Jeypur in 1931 and since then Kumarika Mani Debi (Pattamani Debi) is disputing the succession to the Gadi. Chandra Sekhar Nisanka, Kapila Patnaik and Radhakrishna Santra opposed the succession of Vikram Deb Varma and these gentlemen were interned at Nellore. Kumarika Mani Debi did not come to Jeypur till 1951. Further down, he has said that the interned persons began to work for the Ganatantra party when Kumarika Mani Debi came to Jeypur and these persons are members of the party except Radhakrishna Santra. According to his own admission Kumarika Mani Debi came to Jeypur on the request of the Maharaja of Balangir who is the President of the Central Board Ganatantra Party. She observed purdah but she came to the public on the occasion of her visit to Jeypur. P.W. 9 Sheikh Abdul Khadar has told us that the basis of their preaching for the Ganatantra party was that the Maharaja of Balangir and the Maharaja of Kalahandi were in the Ganatantra party and that Kumarika Mani Debi belonged to the said party. The general impression created in the minds of the people of the estate on the advent of Mani Debi is what is deposed to by P.W. 7 Madhu Majhi which runs as follows: "We all wish that Kumarika Pattamani should ascend the throne of Jeypur". The canvassing for the Ganatantra party being in the name of Mani Debi and the success of the Ganatantra party men having been understood by the electors as accession of Mani Debi to the Gadi, the facts stated above lead to the conclusions that respondent No. 1's success depended on the merits of his case; the success of the majority of the Ganatantra candidates in the district— a fact which is not disputed — was mainly due to the preaching conducted by the Ganatantra party men in the name of Pattamani Debi and bringing home to the minds of the people that success of the Ganatantra party in the election would pave the way for Pattamani Debi's accession to the throne and that the District Magistrate and the officials of Jeypur estate did not do any canvassing on behalf of respondent No. 1 and all measures taken by the General Manager of the estate were taken in the direction of counteracting the propaganda of the Ganatantra party, safe-guarding the interest of the minor Rajah and averting the recurrence of the rising of 1931 which was anticipated in the wake of Pattamani's tour in the estate.

25. We, therefore, find that respondent No. 1 did not utilise his position as Minister of the Orissa State nor did he take the assistance of the District Magistrate and the officials of the Jeypur estate particularly that of the General Manager of Jeypur estate to achieve his success in the election.

26. *Issue No. 12.*— This issue was originally framed to consider the illegality of the election of respondent No. 1 in view of the alleged corrupt and illegal practices canvassed under issue Nos. 1 and 2. After amendment, threat and intimidation referred to in paras 11 to 13 of the list of particulars have been taken up for consideration in this issue. The corrupt and illegal practices covered by issues 1 and 2 have been found to be not proved and we are now to see if particulars Nos. 11 to 13 have been proved to render the election of respondent No. 1 invalid. Particular No. 11 it is said that Surendra Singh the Manager of H. Deer Company and the Raigarh forest officer intimidated the electors at Jhadigam polling booth. Under particular No. 12 it is said that the agents and workers of respondent No. 1 including Lakshmichandra Das (R.W. 5

went to certain villages and preached that if the electors did not vote for the congress, military police would come and oppress them as they did in the year 1942 Congress movement. Under para 13 it is said that R.W. 5 Lakshmichandra Das and another threatened Baliar Naik and villagers of Maniguda at the polling booth saying that if they voted against congress they should be oppressed and shot at as in the 1942 movement and at this the voters cast their votes in the ballot box of respondent No. 1. Here it is to be noted that attempt has been made in evidence to show that there was police marching at Omarkote on the second day of polling and the electors about 200 in number were scared away. This fact *viz.*, police marching is not covered by any of the above three particulars and it need not come up for our consideration. In course of respondent No. 1's cross examination questions have been put to him with a view to show that a police van and escort party moved with him in his tour in the constituency. But respondent No. 1 has said that at the place where he was camping there was police arrangement as is usual in the case of a Minister's visit. He has further said that he did not require a police van to follow him when he was going out on tour. Last of all he has said that the usual police arrangement was there during his first visit to Nabarangpur but thereafter it was discontinued under his orders. P.W. 11 Abhimanyu Rath has been asked to say about police marching at Omarkote booth but his evidence is not worth believing as he seemed to us to be a liar of the first water. P.W. 13 Sri Harihar Misra speaks of police van moving or following the minister respondent No. 1's car but that evidence too is hearsay as admitted by him. Thus the police marching at Omarkote is left out of consideration as a fact not covered by the pleadings and not proved by the evidence on record. So far as Baliar Naik being threatened and his casting the vote in the congress box of respondent No. 1, it must be ruled out as Baliar Naik is not examined as a witness before us. It is said that the villagers of Maniguda did like Baliar Naik as they were threatened by respondent No. 1's men but these villagers are not examined to substantiate the charge made in paragraph 13. In paragraph 12, it is said that the villages Makar Chandguda, Chacharaguda and Maniguda in Debagam Police Station were visited by respondent No. 1's agents and workers and the voters were threatened in the name of 1942 congress movement. It is said on respondent's side that these villages are small villages and were not visited by respondent No. 1's workers and agents. (*vide* the evidence of Lakshmichandra Das R.W. 5). The petitioner has not examined any person of these Gudas as villages to speak of the threat and intimidation resorted to by Lakshmichandra Das R.W. 5 and other workers of respondent No. 1. Coming last to particular No. 11 which speaks of Surendra Singh, Manager of the H. Deer Company and the Raigarh forest officer preaching at the polling booth Jadigam, it is not known who is the Raigarh forest officer referred to therein. P.W. 6 Narayana Jena has referred to one Apparao forester preaching at Jhadigam booth. The said Apparao according to the respondent's evidence is not the forester or the forest officer but is the treasurer of H. Deer Company. To believe P.W. 6 that Surendra Singh did preaching on behalf of respondent No. 1 P.W. 6 must in the first instance be shown to be a trustworthy witness. P.W. 6 is a servant of A. R. Khan who is the President of the Ganatantra party. It is said that four other workers of the party heard the preachings of Surendra Singh but none of them is examined to corroborate P.W. 6. According to respondent No. 1's evidence there being no forester or forest officer Apparao by name in the service of the estate and the petitioner having made an inconsistent case as to the forest officer *i.e.*, forest officer being referred to in the particulars and forester in the oral evidence particular No. 11 also is not proved. Speaking generally about the threat and intimidation referred to in particulars 11 to 13, P.W. 8 has said that the Manager of H. Deer Company though canvassing on behalf of the congress did not give any threat. P.W. 9 S. A. Khadar speaks of threats. He speaks of respondent No. 1's preaching at Dabugam 15 days before the polling that lathi charge and firing to which they had been subjected in the civil disobedience movement would be repeated against the Ganatantra party men before the Congress makes over the reins of the Government to the Ganatantra party just as was done for the attainment of Swaraj. This Dabugam incident does not find a place either in the petition or in the particulars. It is said that there were others who heard the lecture of respondent No. 1 at the meeting but none of them is examined to corroborate P.W. 9. P.W. 9 is a seller of ready-made cloth and for doing one month's canvassing for the Ganatantra party he was paid only Rs. 5 though he poses not to remember what amount he got and says that he was meeting all the expenses of his journey in connection with the propaganda work for his pocket out of love for the people. He does not belong to the Ganatantra party but still he says that he was a worker and that without remuneration. Little reliance need therefore be placed on P.W. 9's statement particularly so far as the preaching at Dabugam by respondent No. 1. P.W. 10 Sheik Sultan is a relation of A. R. Khan, President of the Ganatantra Party and he had first denied receipt of any money towards remuneration. Anyway he does not speak anything about the preachings of respondent No. 1's agents and workers. P.W. 11 though an office bearer of the party has very little to say about threats and intimidation. P.W. 12 Abhimanyu Rath is the person who has come forward to support the petitioner by saying that there was police marching on the second day of polling at Amarkote, that the General Manager P.W. 1 canvassed the villagers at Jatabal, that the District Magistrate parted the voters at the polling booth and lastly the congress preaching was in the name of 1942 oppression. This witness as already said more than once is a brazen-faced liar. That apart prior to the polling days, he had not come to the constituency as we have got it from the petitioner P.W. 13 himself. His evidence about preaching using words of threat and intimidation by respondent No. 1's agent and worker has therefore no value whatsoever. On the respondent's side Lakshmichandra (R.W. 5) has been examined to deny the allegation that he and other workers of respondent No. 1 used threat and intimidation in course of preaching for respondent No. 1. Besides respondent No. 1, Sri Jagadish Chandra Naik R.W. 6 was holding tour in the constituency he being a candidate for the Parliamentary seat. Sri Jagadish Chandra Naik an

advocate of Koraput has denied that in course of their preaching, any threat or intimidation was used. He has said that the estate officials were not canvassing when he and respondent No. 1 were holding tours for the purpose of propaganda. On a consideration of the evidence led on either side, we have no hesitation in coming to the finding that the alleged threat and intimidation referred to in particular Nos. 11 to 13 of the list of particulars are not proved and the election of respondent No. 1 is not vitiated by such corrupt and illegal practices. Accordingly, we are of opinion that on the ground of various corrupt and illegal practices alleged in the petition and particulars the election of respondent No. 1 is not liable to be set aside and the election was a free election.

27. *Issue No. 3.*—Not pressed.

28. *Issue No. 4.*—It is said that at Raigarh booth the polling agent of the petitioner Ramachandra Patnaik P.W. 5 was not allowed entrance inside the booth till 4-30 P.M. on the first day of polling. P.W. 5 has been examined to speak about it. To rebut this evidence respondent No. 1 has examined Brandaban Das R.W. 1 who was his polling agent at the particular booth. The counter evidence led on respondent's side is that P.W. 5 attended booth late on the first day of polling, wanted the clerk of the booth to tell him if his name was in the list, that before the papers could be verified and the information given P.W. 5 became impatient and left the place in anger. The Presiding Officer later found out P.W. 5's name from the list and made a search for him but P.W. 5 was then not found near the booth. There is oath against oath. Besides, P.W. 5 is not able to say the hour at which he signed the list and it may be as said by R.W. 1 that he reached at 9 A.M. while the polling started at 8-30 A.M. P.W. 5 having finally been allowed to work as the polling agent of the petitioner the probable version appears to be the story told by respondent's witness that P.W. 5 reached late and without waiting to know finally whether his name is there in the list he left the place and subsequently on his return was allowed to attend the booth. Apart from the fact that P.W. 5 was not allowed entrance, the petitioner is to prove how the particular irregularity has vitiated the proceeding and has materially affected the election. There can possibly be no suggestion of this irregularity affecting the election materially and the consideration of the point at issue is a very trivial one. We hold that there was no refusal to P.W. 5 to enter the booth and his absence from the booth on the first day of polling for a few hours has not affected the result of election materially.

29. *Issue No. 5.*—It is said that at Raigarh booth the order in which the boxes of the three candidates was placed continued from 5th to 11th January and on the 11th January the order of arrangement was changed by which the petitioners' box which was kept first came to the middle and respondent No. 1's box which was in the middle went up to the first. P.W. 8 is examined to say as above. By way of rebuttal R.W. 2 Raghunath Bewarta the polling agent of respondent No. 1 is examined. He has stated that in the new arrangement the order of the boxes was not changed but the exit was closed leaving one way both for entrance and exit. In this connection we have got the material document Ex. 20 the objection filed by respondent No. 2 before the Presiding Officer, Raigarh. Taking Ex. 20 as it is, the petitioner's case of his box being put in the first and the same being removed to the second place is rather disproved as according to the document respondent No. 2's box was removed from one end to the other. That apart, the order of the Presiding Officer Ex. 20, a makes the whole thing clear. It shows that the position of the plank or the bench on which the boxes were kept was changed on the 11th January as per the direction of the District Magistrate and the boxes were placed vertically with the screen. The respondent's evidence being in a line with the note of the Presiding Officer, we hold that the petitioner's allegation of changing the order of the boxes is not proved and the order in which the boxes were placed from the beginning continued till the poll was over though the bench on which the boxes were placed was kept vertically with the screen after the sixth day of polling. We also hold that the alleged change of the order of the boxes, even if true, did not create such confusion as would affect the result of the election.

30. *Issue No. 6.*—Not pressed.

31. *Issue No. 10.*—This issue no longer assumes importance after the findings on facts have been recorded against the petitioner. Originally the petition was filed without impleading respondents 4 and 5 whose nomination papers were rejected by the Returning Officer and 6 and 7 who withdrew their candidature and did not contest at the poll. Objection being taken, there was prayer for amendment and the Tribunal by its order dated 5-1-1953 allowed addition of parties after the time fixed under the statute. According to the petitioner's lawyer when the Tribunal took the view that it had power to add parties under sec. 90(2) of the Act, it is implied that the petition is to be heard on merits and dismissed under sec. 98 and not on any preliminary or technical ground. The case reported in Bombay Law Report page 334 is also cited in support of the contention above advanced. Addition of parties and the consideration of question of limitation however much inter-connected they may look, the question of limitation has its special feature for its consideration. The reported case does not appear to have been decided in that light. Apart from the citation made on petitioner's side we propose not to give any finding on the question of limitation as it has no longer any determining effect and we have recorded our finding on facts against the petitioner.

32. *Issue No. 11.*—Addition of parties having been allowed the maintainability of the application does not arise any more for our serious consideration.

33. *Issue Nos. 7, 8 and 9.*—The findings under issues 1, 2 and 12 being that the corrupt and illegal practices alleged in the petition are not proved to invalidate the election of respondent No. 1, we find that respondent No. 1 has been duly elected and neither his election nor the whole election is void.

34. Accordingly, we dismiss the petition and direct the petitioner to pay Rs. 250 as costs to the contesting respondent No. 1.

Dictated to the shorthand writer and pronounced in open Court this 30th day of April, 1953.

(Sd.) G. K. MURTI,

(Sd.) R. K. RATHO, *Members.*

(Sd.) D. N. DAS, *Chairman,*
Election Tribunal.

The 30th April, 1953.

WITNESSES EXAMINED

For the petitioner.—

- P.W. 1. Sri Gopinath Bhara,
- P.W. 2. Dinabandhu Panigrahi,
- P.W. 3. Balak Das,
- P.W. 4. V. Ramamurty,
- P.W. 5. Ramachandra Patnaik,
- P.W. 6. Narayana Jenna,
- P.W. 7. Madhu Majhi,
- P.W. 8. Cristagar Kachim,
- P.W. 9. Sk. Abdul Khadar,
- P.W. 10. Sk. Sultan,
- P.W. 11. Harihar Misra,
- P.W. 12. Abhimanu Rath,
- P.W. 13. Ramachandra Choudhury.

WITNESSES EXAMINED.

For the Respondent No. 1.—

- R.W. 1. Brundaban Das,
- R.W. 2. Raghunath Beverta,
- R.W. 3. Biswanath Panigrahi,
- R.W. 4. Rajendra Prasad Sing.
- R.W. 5. Laxmichandra Das,
- R.W. 6. Sri J. Ch. Nayak,
- R.W. 7. Sri Sadasib Tripathy.

DOCUMENTS MARKED

For petitioner :—

- Ex. 1. Letter d/9-1-51.
- Ex. 2. Gazette notification d/15-12-1951.
- Ex. 3. Letter d/14-6-1952 from the General Manager, Jeypore Estate to the Collector, Koraput.
- Ex. 4. Circular d/17-12-1951 by the General Manager to the Divisional Managers.
- Ex. 5. Confidential letter d/9-9-50 to all Divisional Managers from the Dewan, Jeypore.
- Ex. 5.a. Circular No. 72/60-cc d/25-9-1951 from the Dewan to all concerned.
- Ex. 6. Order of the General Manager d/26-12-1951 asking K. Venkatarao to make over charge of his office.
- Ex. 7. Representation of K. Venkatarao d/1-1-1953.
- Ex. 8. D.O. No. 695/51-cc d/6-12-51 to the Collector, Koraput.
- Ex. 8.a. D.O. No. 705/51-cc d/17-12-51 to the Collector, Koraput.

- Ex. 9. Page 31 of the notes file relating to increase of seigniorage of Jeypore Estate forest.
- Ex. 10. Telegram d/2-1-52 to the District Magistrate, Koraput.
- Ex. 10-a. Post copy of telegram d/2-1-52.
- Ex. 11. Forest department receipt No. 29613 d/24-10-51.
- Ex. 11-a. Do. No. 30180 d/13-12-51.
- Ex. 11-b. D.O. No. 7204 d/20-12-51.
- Ex. 12 to 12 J. The Diaries of K. Ranga Prasad, Ranger of Nawrangpur.
- Ex. 13. Counterfoil receipt d/20-12-51 of Forest department, Jeypore, relating to Dabugam.
- Ex. 13-a. Do. d/20-12-51.
- Ex. 13-b. Do. d/20-12-51.
- Ex. 13-c. Do. d/20-12-51.
- Ex. 13-d. Do. d/20-12-51.
- Ex. 13-e. Do. d/15-12-51.
- Ex. 13-f. Do. d/20-12-51.
- Ex. 13-g. Do. d/20-12-51.
- Ex. 13-h. Do. d/20-12-51.
- Ex. 13-i. Do. d/27-12-51.
- Ex. 14. Counterfoil receipt d/16-12-51 of Forest Department, Jeypore, relating to Papidahandi.
- Ex. 14-a. Do. d/18-12-51.
- Ex. 14-b. Do. d/20-12-51.
- Ex. 14-c. Counterfoil receipt d/28-12-51.
- Ex. 14-d. Do. d/18-12-51.
- Ex. 14-e. Do. d/18-12-51.
- Ex. 14-f. Do. d/22-12-51.
- Ex. 14-g. Do. d/23-12-51.
- Ex. 14-h. Do. d/26-12-51.
- Ex. 15. Circular d/19-12-51.
- Ex. 16. A letter d/31-12-51 to R.I. of Jagannathpur, complaining that Naiks of 2 Villages are conspiring with A. Misra.
- Ex. 17. A receipt d/5-1-52 in token of having received a letter.
- Ex. 18. Letter d/31-12-51 by Sri Bidyadhar Singh to R. I. Jayanth.
- Ex. 19. Letter d/25-1-52 by H. Misra to the petitioner.
- Ex. 20. The objection petition of respondent-2 before the P.O. on 11-1-52.
- Ex. 20-a. The endorsement of P.O. on Ex. 20.
- Ex. 21. The objection petition of Abhimanu Rath before R.O. on 25-1-52.
- Ex. 21-a. Receipt for Ex. 21.
- Ex. 22. The letter d/30-12-51 by Sadanand Patnaik.
- Ex. 22-a. The letter d/nil, by P. Majhi.
- Ex. 23. Receipt d/12-1-52 for rupees 10.
- Ex. 24. Receipt for Rs. 20 in the election expense of respondent.
- Ex. 24-a. Receipt for Rs. 23 in the election expense of respondent No. 1.
- Ex. 25. Receipt d/3-1-52 for Rs. 30 in the election expenses ?
- Ex. 26 & 26-a. Two photos of respondent No. 1 with symbols of congress boxes.
- Ex. 27. No. 6 form of petitioner regarding appointment of polling and counting agent.
- Ex. 27-a and 27-b. No. 6 form of respondent No. 1 and respondent No. 2.
- Ex. 28. Form No. 14 of petitioner.
- Ex. 28-a. Form No. 14 of respondent No. 1.
- Ex. 28-b. form No. 14 of respondent No. 2.
- Ex. 29. Form No. 16 (return of election).
- Ex. 30. The election expense of petitioner.
- Ex. 31. The election expense of respondent No. 1.

DOCUMENTS MARKED

For respondent.—

- Ex. A. D.O. letter No. 2064 d/13-12-51 to the General Manager, Jeypore estate.
Ex. B. Letter No. R.C. 562 /48 Election d/12-2-52 to the General Manager, Jeypore estate.
Ex. B. 1. Extract from Eastern Times d/10-2-52.
Ex. C. Letter No. 1223/45 O.C. d/20-2-52 from the Chief Forest Officer to the General Manager, Jeypore estate.
Ex. C. 1. Order No. R.C. 1594/61. B4 d/13-3-52 of the General Manager, Jeypore estate.
Ex. C. 2. The office note on the back of Ex. C.
Ex. C. 3. The order d/5-3-52 on the back of Ex. C.
Ex. C. 4. The note made by the steno on the back of Ex. C.
Ex. D. Confidential D.O. No. 12/51.c.c. d/16-1-52 to the Collector, Koraput.
Ex. E. Memo No. 42 A/52 c.c. d/13-2-52 from General Manager to Chief Forest Officer and others.
Ex. F. Circular No. 285/60 c.c. d/6-4-51 by the Dewan, Jeypore.
Ex. G. The polling agent Form No. 6 of Sibaram Sahani.
Ex. G. 1. Do. of R. C. Patnaik.
Ex. H. A receipt d/4-1-52 for Rs. 20.
Ex. H. 1. A receipt d/3-1-52 for Rs. 37.
Ex. H. 2. A receipt for Rs. 5.
Ex. H. 3. A receipt for Rs. 20.
Ex. J. The counting agent form of Sk. Sultan.
Ex. K. A manifesto for Ganatantra party by Dr. H. R. Khan.
Ex. L. A manifesto of Abhimanu, Secretary of Ganatantra Parishad, Koraput.
Ex. M. The appeal of the petitioner.
Ex. N. Manifesto by Srimati Pattamoni Debi.
Ex. O. The printed tour programme of Rajah of Sareikala and Pattamoni Debi.
Ex. P. The nibedan by Sri Harihar Misra.
Ex. H. 4. The T.M.O. receipt for Rs. 25.
Ex. H. 5. The entry of Rs. 25 in Election expenses of Ramachandra Chaudhury.

(Sd.) G. K. MURTI,

(Sd.) D. N. DAS, *Chairman.*

(Sd.) R. K. RATHO, *Members.*

[No. 19/116/52-Elec. III/6715.]

By Order,

P. R. KRISHNAMURTHY, Asst. Secy.

